

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO,
WESTERN DIVISION**

MAVERICK COUCH, a minor, by and
through his Mother and Next Friend,
TONYA COUCH,

Plaintiff,

v.

WAYNE LOCAL SCHOOL DISTRICT,
a political subdivision of the State of Ohio,

and

RANDY GEBHARDT, both in his
individual capacity and in his official
capacity as Principal of Waynesville High
School,

Defendants.

Case No.: 1:12-cv-265

**Judge
Magistrate Judge**

VERIFIED COMPLAINT

Maverick Couch, a minor, by and through his mother and next friend, Tonya Couch,
("Plaintiff") states and complains as follows:

INTRODUCTION

1. Plaintiff brings this action under 42 U.S.C. §§ 1983 ("section 1983") and 1988 to redress the deprivation under color of state law of rights secured by the United States Constitution. More specifically, this Complaint seeks to protect a high school student's well-established First Amendment right to freedom of expression. In April 2011, Plaintiff wore a T-shirt to his school bearing the message "Jesus Is Not A Homophobe." He chose to wear the T-

shirt on the national “Day of Silence,” a student-led annual event designed to draw attention to the harms caused by bullying and harassment directed at lesbian, gay, bisexual and transgender (“LGBT”) students. But high school officials refused to allow him to wear his T-shirt because of the message it conveyed and threatened to discipline him, including by suspension, if he wore the shirt to school again. This lawsuit seeks to enjoin the school’s unconstitutional conduct, to obtain a declaration of rights and to recover nominal damages for this violation.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to: (a) 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States; (b) 28 U.S.C. § 1343 because this action seeks to redress the deprivation of Plaintiff’s rights by the Defendants acting under color of state law; and (c) 28 U.S.C. § 2201 because this action seeks a declaratory judgment.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because substantially all of the events that give rise to the claims in this action occurred in Warren County, Ohio.

THE PARTIES

4. Plaintiff Maverick Couch (“Maverick”) is a sixteen-year-old high school junior at Waynesville High School in Waynesville, Ohio and is a citizen and resident of the State of Ohio. Maverick, the real party in interest, appears herein by and through his mother and legal next friend Tonya Couch (“Ms. Couch”), who also is a citizen and resident of the State of Ohio, and who brings this suit on his behalf.

5. Defendant Randy Gebhardt (“Principal Gebhardt”) is a citizen and resident of the State of Ohio. He is sued both in his personal capacity and in his official capacity as the principal of Waynesville High School. Waynesville High School is part of the Wayne Local School District. Principal Gebhardt is a “person” for the purposes of liability under section 1983. At all relevant times, Defendant Gebhardt acted under color of state law. Defendant Gebhardt is sued in his official and individual capacity.

6. Defendant Wayne Local School District (“the District”) is a political subdivision of the State of Ohio. The district operates public elementary, middle and high schools in Waynesville, Ohio. The District is a “person” for purposes of liability under section 1983.

FACTUAL ALLEGATIONS

7. On or around April 15, 2011, Maverick went to school wearing a T-shirt bearing the message “Jesus Is Not A Homophobe” in black letters (“the T-shirt”). The T-shirt also includes a symbol consisting of two intersecting arcs. This symbol, which is sometimes referred to as an “Ichthys” (the Greek word for “fish”), is now known colloquially as the “sign of the fish” or the “Jesus fish.” During the early days of Christianity, when Christians were often persecuted by the Romans, the “Jesus fish” was used as a secret symbol to mark Christian meeting places. On Maverick’s T-shirt, the interior of the Jesus fish is shaded in the colors of the rainbow. Rainbow colors are often used to denote identification with, and/or support for, the LGBT community.

8. Maverick’s decision to wear the T-shirt stemmed, in part, from his desire to participate in the national “Day of Silence.” The Day of Silence is a student-led national event, held annually, that brings attention to anti-LGBT name-calling, bullying and harassment in

schools. Students from middle school to college wear messages of support of the event and of its goals on T-shirts and in other ways. In addition, students often take a vow of silence in an effort to encourage schools and classmates to address the problem of anti-LGBT conduct by illustrating the silencing effect of bullying and harassment on students who are or who are perceived to be LGBT. Although Maverick's school, Waynesville High School, does not have a student group that was planning any Day of Silence activities, Maverick wanted to show his support for the activities taking place in other schools across the country by wearing his T-shirt to Waynesville High School and to express support for the goals of the Day of Silence.

9. Maverick's decision to wear his T-shirt to school on the 2011 Day of Silence did not cause disruption of or interference with school activities. Nevertheless, he was summoned to Principal Gebhardt's office. Principal Gebhardt told Maverick to remove the T-shirt or to turn it inside out. Maverick complied with Principal Gebhardt's directive by turning the T-shirt inside out.

10. On the next school day (after the intervening one-week spring break), Maverick again wore his T-shirt to school. Once again, his T-shirt did not cause disruption of or interference with school activities, but he was nonetheless summoned to the Principal's office. Principal Gebhardt ordered Maverick to remove the T-shirt or face suspension from school. Maverick asked Principal Gebhardt to contact Maverick's mother. After Ms. Couch arrived at school, Principal Gebhardt repeated his position that Maverick would be suspended from school if Maverick did not remove the T-shirt. Maverick removed his T-shirt and returned to class.

11. On the two days that Maverick wore the T-shirt, Principal Gebhardt provided two different explanations as to why the T-shirt was unacceptable. On one occasion, Principal

Gebardt told Maverick that the T-shirt was “disrupting the educational process.” On the other occasion, he told Maverick that the T-shirt “had to do with religion” and that “religion and state have to be separate.”

12. At the beginning of the 2011-2012 school year, after Maverick had educated himself about the law governing students’ rights to express themselves at school, he again spoke to Principal Gebhardt. In that conversation, Maverick asserted his right to wear the T-shirt to school. Principal Gebhardt told Maverick that he would not be permitted to wear the T-shirt to school because others in the school might find it offensive. Principal Gebhardt also warned Maverick that he would be suspended from school if he wore the T-shirt again.

13. On January 24, 2012, Maverick had a letter sent to Principal Gebhardt about students’ rights to free speech and expression and why the law does not permit Waynesville High School to deny Maverick the opportunity to wear his T-shirt to school. A true and correct copy of the letter that was sent to Principal Gebhardt is attached to this Complaint as Exhibit A.

14. On two occasions following the January 24th letter, Maverick approached Principal Gebhardt to find out if the Principal had altered his position regarding Maverick’s right to wear the T-shirt to school. On the first occasion, Principal Gebhardt told Maverick that he had not yet had the opportunity to consider the letter. On the second occasion, Principal Gebhardt told Maverick that the January 24th letter had been forwarded to the Superintendent of the District and the Board of Education for the District.

15. On February 24, 2012, the Wayne Local School District Board of Education, through its attorney, responded to the January 24 letter. At that time, the District articulated its policy with respect to Maverick’s T-shirt:

It is the position of Wayne Local School District Board of Education that the message communicated by the student's T-shirt was sexual in nature and therefore indecent and inappropriate in a school setting. Wayne Local School District Board of Education had the right to limit clothing with sexual slogans, especially in light of what was then a highly charged atmosphere, in order to protect its students and enhance the educational environment. Consequently, the high school principal was well within the bounds of his authority to request that the student remove his T-shirt and refrain from wearing the T-shirt in the future.

A true and correct copy of the February 24th letter is attached to this Complaint as Exhibit B.

COUNT I

Violation of the First Amendment – 42 U.S.C. § 1983

16. Plaintiff incorporates each of the foregoing allegations as if fully set forth herein.

17. The First Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment to the United States Constitution and enforceable pursuant to 42 U.S.C. § 1983, provides that states may not abridge the freedom of speech. The First Amendment secures the rights of individuals, including students, to express themselves without unjustified interference or constraint by the government, including public schools, which may not prohibit the expression of an idea simply because society finds the idea offensive or disagreeable.

18. Maverick's wearing of the "Jesus Is Not A Homophobe" T-shirt to Waynesville High School constitutes speech, symbolic action and expressive conduct protected by the First Amendment to the United States Constitution.

19. Defendants took action, including making threats of suspension, against Maverick to inhibit, suppress and otherwise regulate his speech because of the expressive content,

viewpoint, symbolic value and/or communicative impact of his T-shirt. Defendants' conduct has had the desired effect of chilling Maverick's right of free speech and expression.

20. At all times with respect to the actions described herein, Defendants acted under color of state law.

21. Defendants' actions, as confirmed by Attorney Deters on behalf of the Board of Education, were ratified as the official position of the policymakers for the District and, therefore, those actions are deemed to be the actions of the District itself for purposes of liability under section 1983.

22. Defendants' actions were not narrowly tailored to achieve a compelling state interest.

23. Defendants violated Maverick's rights, privileges and immunities under the First Amendment of the United States Constitution, made applicable to Defendants by the Fourteenth Amendment.

COUNT II

Violation of the Fourteenth Amendment – 42 U.S.C. § 1983

24. Plaintiffs incorporate each of the foregoing allegations as if fully set forth herein.

25. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall deny any person the equal protection of the laws.

26. Under the Equal Protection Clause, Defendants may not grant the use of a forum to people whose views they find acceptable, but deny its use to those wishing to express less

avored or more controversial views. There is an equality of status in the field of ideas and Defendants must afford all points of view an equal opportunity to be heard. Once a forum is opened up to assembly or speaking by some groups, Defendants may not prohibit others from assembling or speaking on the basis of what they intend to say.

27. The District's policymakers have deemed messages that urge tolerance for LGBT students and that oppose discrimination and bullying that targets some students based on their sexual orientation, gender identity, or gender expression to fall within a class of messages that are "sexual" in nature. Under the District's policy, these messages are considered categorically impermissible. Therefore, the District's policy creates a classification of students (those who seek to express these messages) and treats them differently and worse than other students by denying them freedom of expression and threatening them with discipline.

28. The District's policy describes impermissible speech and expression, not in terms of time, place and manner, but in terms of subject matter. The policy thus slips from the neutrality of time, place and circumstance into concerns about content and viewpoint.

29. Because the District's policy employs a classification affecting First Amendment interests, it must be narrowly tailored to legitimate and substantial governmental interests. To the contrary, the District here has imposed a selective restriction on the expressive conduct of a class of students based on the content of and viewpoints expressed in their expression, which violates the Equal Protection Clause.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Maverick Couch, by and through his mother and next friend Tonya Couch, requests that this Court:

- (i) temporarily restrain and preliminarily enjoin Defendants from interfering with Maverick Couch's right to wear the "Jesus Is Not A Homophobe" T-shirt to school; and
- (ii) enter final Judgment that
 - (a) declares the Defendants' actions alleged herein violate Plaintiff's First Amendment rights to free speech and expression;
 - (b) declares the Defendants' actions alleged herein violate Plaintiff's Fourteenth Amendment rights to equal protection under the laws;
 - (c) permanently enjoins Defendants from prohibiting Maverick from wearing the "Jesus Is Not A Homophobe" T-shirt, or any other T-Shirt or clothing that urges tolerance of differences, respect for diversity, or opposition to bullying of LGBT students, unless the Defendants can reasonably forecast substantial disruption of or material interference with school activities;
 - (d) awards nominal damages against all Defendants;
 - (e) awards costs of this litigation, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and
 - (f) grants such further and different relief as this Court deems proper.

Respectfully submitted,

/s/ Lisa T. Meeks

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/s/ Christopher R. Clark

Christopher R. Clark (motion to admit *pro hac vice* pending)

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cclark@lambdalegal.org

Attorneys For Plaintiff

STATE OF OHIO)
) §§
COUNTY OF _____)

VERIFICATION

I, Maverick Couch, hereby verify, under penalty of perjury, that the facts alleged in the foregoing Complaint are true and correct according to the best of my current information, knowledge and belief.

Maverick Couch

Subscribed and sworn to before me this ____ day of _____, 2012.

My commission expires:

Notary Public

_____.

STATE OF OHIO)
) §§
COUNTY OF _____)

VERIFICATION

I, Tonya Couch, mother of Maverick Couch, hereby verify, under penalty of perjury, that the facts alleged in the foregoing Complaint are true and correct according to the best of my current information, knowledge and belief.

Tonya Couch

Subscribed and sworn to before me this ____ day of _____, 2012.

My commission expires:

Notary Public

_____.

Certificate of Service

I certify that, on April 3, 2012, a copy of this Verified Complaint was sent by ordinary U.S. Mail and electronic email to:

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/s/ Lisa T. Meeks

Lisa T. Meeks
Attorney for Plaintiff